In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 38

THOMAS E. POLLARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

At the oral argument Mr. Justice Clark inquired of counsel for the Government concerning the "other criminal matters" which were presented to Judge Joyce on the morning of October 3, 1952, during the interval between (a) petitioner's departure from the courtroom, and (b) Judge Joyce's statement, answering the query of the Assistant United States Attorney as to the disposition of the Pollard case, that he was to be on probation for three years (R. 6).

In further response to Mr. Justice Clark's inquiry, we are lodging with the Clerk a certified transcript of all the proceedings before Judge Joyce that morning, and it is reprinted in the Appendix hereto.[1] The transcript shows:

[1] A copy of this transcript was made available to, and was examined by, counsel for petitioner prior to the oral argument of this case on December 3, 1956.

410376—56——1

1. The district court's session on the morning of October 3 commenced at 10 a. m. and concluded at 10:30 a. m. The Pollard case was taken up as the second matter on the calendar, and again at the close of the session. The interval between Judge Joyce's original disposition of the case and his later statement that Pollard was to be placed on probation was apparently no more than 20 or 25 minutes. The intervening matters principally involved sentences and arraignments.

2. Judge Joyce remained on the bench throughout the entire half-hour session. There were apparently no discussions between Judge Joyce and others concerning the Pollard case, apart from those appearing in the printed record (R. 4–6).

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

DECEMBER 1956.

APPENDIX

In the United States District Court, District of Minnesota, Fourth Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THOMAS E. POLLARD, ET AL., DEFENDANT

The above matters came on for disposition before the Honorable Matthew M. Joyce, judge of the above court, in the United States Court House, Minneapolis, Minnesota, October 3, 1952; William Essling, Ronald E. Hachey, and Richard Johnson, Assistant United States District Attorneys.

OCTOBER 3, 1952—10:00 a. m.

Mr. ESSLING. If the Court please, Mr. Hachey has the first matter.

Mr. HACHEY. The first matter on this morning's calendar is the matter of *United States* vs. *Leroy Wayne Potter*. This young man is a juvenile and appeared before your Honor on May 19th of this year, charged under the Juvenile Delinquency Act of the interstate transportation of a stolen motor vehicle. The facts indicate that in August of 1952 he stole an automobile in Milwaukee and transported it to Omaha, Nebraska, where he was arrested.

The COURT. How old is he now?

Mr. HACHEY. Are you 18?

The DEFENDANT. Yes.

The COURT. Have you any explanation as to why you stole these cars?

The DEFENDANT. No.

The COURT. None at all?

The DEFENDANT. No.

The COURT. Do you have a feeling of regret about it, are you sorry you did it or would you do it again if you had a chance?

The DEFENDANT. I wouldn't do it again.

The COURT. You wouldn't?

The DEFENDANT. No.

The COURT. Why?

The DEFENDANT. I see the mistake now.

The COURT. Do you know that you did $626 worth of damage on that first car, the Oldsmobile?

The DEFENDANT. Yes.

The COURT. You do. You have stolen three cars—Oldsmobile, Mercury, and I forgot what the last one was—what was it?

The DEFENDANT. Another Oldsmobile.

The COURT. Oh, another Oldsmobile. Do you like Oldsmobiles?

The DEFENDANT. Sure.

The COURT. You were happy at home, weren't you? Your father and mother were good to you?

The DEFENDANT. Sure.

The COURT. Didn't you have an idea that going out and stealing these cars was going to make them very unhappy and miserable and cause them a great deal of sorrow?

The DEFENDANT. Yes.

The COURT. Did you care about that?

The DEFENDANT. I didn't think I would at the time.

The COURT. How far along in school did you get?

The DEFENDANT. Got one year to go yet.

The COURT. Did you get good marks in school?

The DEFENDANT. No.

The COURT. Wasn't there anything you did well in?

The DEFENDANT. Oh, some subjects I did fairly good in.

The COURT. Did you like to go to school at all?

The DEFENDANT. Yes; I'd like to go back to school now.

The COURT. Did you go for athletics at all?

The DEFENDANT. Not in school, but outside of school.

The COURT. There is nothing for me to do in view of your age and the circumstances of this case except to remand you to the custody of the Attorney General of the United States or his duly authorized representative for the period of your minority. That will be the order.

Mr. HACHEY. That's all.

The next matter is United States versus Thomas E. Pollard. This matter is here for sentencing, your Honor. At this time the Government moves for sentencing of the defendant.

The COURT. You are presently in Stillwater?

The DEFENDANT. Yes, sir.

The COURT. How long have you been there?

The DEFENDANT. Thirteen months, sir.

The COURT. Have you any craving or desire for a drink now?

The DEFENDANT. None whatsoever.

The COURT. You are about 35?

The DEFENDANT. Yes, sir.

The COURT. I suppose that you are an age where you realize now the futility, don't you?

The DEFENDANT. Yes; very much so, your Honor.

The COURT. The report shows that you have taken a very active interest in the AA organization in the prison.

The DEFENDANT. I have, sir.

The COURT. And that you contemplate doing that when you get out?

The DEFENDANT. I do.

The COURT. The report also shows that you won't get out until 1953 sometime.

The DEFENDANT. December 1953 is my discharge date.

The COURT. When do you have an opportunity for going before the parole?

The DEFENDANT. Next month—I was given three months in August, a three-month waiting term, period, in August.

The COURT. There was one thing you did, as shown in this probation report, which appealed to me. I realize that you had been on a protracted spree when you stole this government check, but when you sobered up long enough to understand what you had done, you went to one of the officers of the Alcoholics Anonymous and told him what you had done and you sought to make amends insofar as you then could do. You told the FBI the circumstances, without any effort on your part to minimize the offense; in fact you had been drinking for some two weeks continually.

You are now 35 years of age.

The DEFENDANT. Yes, sir.

The COURT. You ought to know the misery and the grief and the sorrow and the horror of what continued drinking on your part will bring to you.

If I might suggest to you, and I am giving you gratuitous advice but it is the result of observation and experience—it is my view that when you get out you should immediately join the Alcoholics Anonymous organization—not wait a week or two weeks or three weeks—but have that your first mission after you contact your family, and do what they tell you to do and do it immediately and do it diligently and

faithfully, carry out every obligation that they impose upon you. With your background and with your ability I think that you can win this fight.

If you don't do those things, and if you want to revert to drinking, you will be back here again because you will commit some federal offense, and I won't be talking to you this way if you are ever before me again.

So, good luck to you and I hope the parole board will give you an opportunity. That is all.

The DEFENDANT. Thank you very much, sir.

Mr. ESSLING. If the Court please, the next matter on the calendar appears to be the United States versus Edward Arthur McCormick. This matter is before your Honor for sentence. At this time the government moves for sentence. I might call to the Court's attention that in this matter the attorneys for the Standard Act Indemnity Company have prepared a petition which they desire to present your Honor this morning concerning some $3,096 that the FBI took from the possession of this defendant and I believe the defendant has acknowledged that that money came from the bank, and the petition is going to ask the Court to refund that money, allow the FBI to return that money to the Standard Act Company, and I mention this because perhaps the Court may want to interrogate the defendant.

The COURT. Do you think I should see this before I impose sentence?

Mr. ESSLING. I haven't seen the petition.

The COURT. Who is this attorney?

Mr. ESSLING. Mr. H. Carson.

The COURT. Is he here in court?

Mr. ESSLING. No; he advised me he was going to be here, but he isn't here.

The COURT. He should be here if he had anything to present to the Court this morning in connection with this case.

You came from a good home.

The DEFENDANT. That's right, sir.

The COURT. And a fine family, and by your conduct and action you have so shamed and humiliated your family as to cause them to leave Mankato where they had lived for many years and move up to northern Minnesota to get away from everything. This report shows that you have no regard for, or consideration of, the rights of others, and that every day when you are free you are a menace and threat to society. The report also shows that you are bad, thoroughly bad, and as the probation officer has stated, "if there are any mitigating circumstances in this case we have been unable to find them"—and I cannot find any either. Is there anything that you want to say in your own behalf——

The DEFENDANT. No, sir.

The COURT (continuing). Before the sentence of the Court is imposed upon you?

The DEFENDANT. No.

The COURT. Well, in Missouri you had received two first degree robbery sentences of seven years each and they made a mistake of paroling you, turning you loose on society again. There are parole boards that do those things with the results often that we have here this morning in your case. You perpetrated two holdups here in Minneapolis which you have confessed and in which you were not caught—you got money on both of them. When you robbed this bank at Waterville you caused the people who were there to lie on the floor at the point of a loaded gun. You caused the bank employees to enter the vault and slammed the door—for all that you knew or

cared, they might have suffocated, it wouldn't have bothered you a bit. What do you have on the esthetic side of your nature? The report shows you paid $350.00 for dancing lessons at the Astaire Dancing Studio here in Minneapolis. Part of that course was not completed; it will be completed either in Alcatraz or Leavenworth.

It is the judgment of this Court that you be committed to the custody of the Attorney General of the United States for incarceration in an institution for a period of 15 years, a fine of $5,000.

Mr. JOHNSON. Your Honor, the next matter is that of Domingo Ortiz-Martinez. Your Honor, in that matter the Court I believe would welcome the assistance of an interpreter. We have Mr. Watland here.

The COURT. Is that on my calendar?

Mr. JOHNSON. Yes, your Honor, the fourth matter on the calendar—today's calendar; it's not on your regular criminal calendar, sir.

(Whereupon, Mr. Charles D. Watland was duly sworn in as interpreter for defendant Martinez.)

Mr. JOHNSON. Your Honor, this is a Second Division matter, and I have here a petition for transfer signed by the defendant, witnessed by his attorney.

The COURT. Does he understand what this proceeding is about?

Mr. WATLAND. He says he doesn't.

The COURT. He doesn't. Well, go ahead and tell him.

Mr. JOHNSON. Mr. Nichols explained this petition to you before he signed it?

The DEFENDANT (by the interpreter). Yes.

Mr. JOHNSON. And you want your case to be heard this morning before this judge?

The DEFENDANT. Yes.

The COURT. Is he Spanish?

Mr. JOHNSON. Mexican.

Mr. NICHOLS. He is an American-born citizen; he lives in Eagle Pass, Texas.

Possibly the record should show Floyd D. Nichols appears as his counsel.

The COURT. Where were you born?

The DEFENDANT. Lorado, Texas.

The COURT. How much English did you ever learn?

The DEFENDANT. Very little.

The COURT. Did you ever go to an American school?

The DEFENDANT. No.

The COURT. Did you go to a Spanish school?

The DEFENDANT. No.

The COURT. You were born and raised in the state of Texas?

The DEFENDANT. Yes.

The COURT. He spent all of his life in that area?

The DEFENDANT. In different parts of Texas.

The COURT. Well, I understand, I know now what you said.

Mr. JOHNSON. At this time the government moves the arraignment of the defendant, your Honor.

The COURT. He may be arraigned. Explain to him now he is going to be arraigned, or have you done so?

Mr. WATLAND. No.

(The Indictment was then read by the Clerk of Court.)

The COURT. Now, I suggest that you hand that to the interpreter and let him explain it to him.

(The interpreter does so.)

The CLERK. What is your plea, guilty or not guilty?

The DEFENDANT. I am guilty in that I brought them here, but I did not know that they were from Mexico.

The COURT. Well, as I understand it, these individuals were transported by him in interstate commerce

as charged in the Indictment, but he claims that he didn't know that they were Mexicans.

The DEFENDANT. That's what he said.

The COURT. That is a plea of guilty. It may be entered, and the matter will be referred to Mr. Meili for a report.

I didn't mean to impose a burden on you that is too much, Mr. Meili, but you will have to handle that your own way.

Mr. ESSLING. If the Court please, we have the next matter of the United States versus Earl David Wilson. That was a matter on the general term calendar, being number 8308. Mr. Wilson, step up here, please.

If the Court please, this defendant is here by reason of an Indictment of the grand jury. He was at first arraigned before a commissioner in Duluth and he says that he did not know that he was to report here on the 23rd. I contacted his bonding company and they arranged to have him here today, and at this time we would like to move the arraignment of the defendant.

The COURT. Have you a lawyer?

The DEFENDANT. No, I don't.

The COURT. Well, don't you want a lawyer?

The DEFENDANT. I can't afford a lawyer, sir.

The COURT. What do you do?

The DEFENDANT. I administer the gospel.

The COURT. I know, but how do you earn your living, how do you eat?

The DEFENDANT. I work part time for a lumber company.

The COURT. How many hours a week do you work for them?

The DEFENDANT. About 32.

The COURT. Thirty-two?

The DEFENDANT. Yes.

The COURT. How much money do you get?

The DEFENDANT. About $40 a week.

The COURT. Are you married?

The DEFENDANT. Yes; I am, sir.

The COURT. Any children?

The DEFENDANT. No.

The COURT. You can't hire a lawyer on $160.00 a month?

The DEFENDANT. No, sir.

Mr. ESSLING. I might advise the Court, this defendant has told me that he is the owner of a 1949 Hudson automobile, against which there is a mortgage of about $400. He thinks that there is an equity of about $200 in that automobile.

The COURT. How much do you pay on the car every month?

The DEFENDANT. $50 a month.

The COURT. Well, where is our list—I saw Lee Williams here in the courtroom a little while ago. I'll appoint him to defend you.

You have to sit down until we get hold of him.

Mr. ESSLING. If the Court please, we have another matter from the general calendar, that being the United States versus Vance T. Weaver and Alphonse G. Porier. They are two cases, and they appear on the calendar as numbers 8255 and 8259. The defendants are here with their attorneys and it is my understanding they desire to change their plea from not guilty previously made, and enter a plea of guilty.

The COURT. What number is this?

CLERK OF COURT. Number 8255, it is on page six.

The COURT. All right.

Mr. Lyons and Mr. Hessian.

Mr. LYONS. Your Honor, I represent the defendant Porier. It is the desire of my client at this time to

change his plea to count number four of the Indictment to guilty from not guilty.

The COURT. Number four?

Mr. LYONS. That's right, number four.

Mr. HESSIAN. Likewise, if your Honor please, that is the desire on the part of Weaver to enter a like plea to count number four.

The COURT. Are those agreeable to the United States attorney?

Mr. ESSLING. Yes, your Honor. It is our position that at the time of disposition of the case as to count four the United States attorney will then ask leave of the Court to dismiss the remaining counts of number 8255 and also to dismiss the Indictment in case number 8259.

The COURT. That will be done when the matter is disposed of.

Mr. LYONS. Yes, your Honor.

The COURT. On the plea of guilty on count number four. The matter will be referred to Mr. Meili for a probation report and you gentlemen of course will be advised.

Mr. LYONS. Thank you.

Mr. ESSLING. If the Court please, I have one more matter that was set for this morning and that is the United States versus Russel R. Heim. That was returnable here this morning for any motions that the defendant's attorneys would like to make. I can advise the Court that yesterday I was advised by Mr. Stetson, an attorney associated with Mr. Jacobson, that the defendant does not desire to make any motion under Rule 12 attacking the Indictment. I asked them to write me a letter to that effect and I am advised by our office from St. Paul this morning that we have a letter from the defendant's attorneys to that effect

that they have no motions they desire to make in this case.

The COURT. Very well, it will stand as originally set for trial on the 20th of October.

Mr. HACHEY. One more matter, your Honor. If the Court please, number 8300 on the general calendar down about the fourth from the last page on my calendar, Arthur R. Lafanse.

The COURT. All right.

Mr. HACHEY. A previous plea of not guilty has been entered. It is my understanding talking with Mr. Petzke, counsel for the defendant, he wishes to change the plea to a plea of guilty and is here for that purpose this morning.

Mr. PETZKE. That is correct, your Honor.

The COURT. Is that your desire?

The DEFENDANT. Yes.

The COURT. Very well. The plea of not guilty has been withdrawn and a plea of guilty has gone in and it may be accepted. That will be referred to Mr. Meili.

And your name, please, I didn't get it.

(Mr. Petzke handed a card to the Court.)

Mr. HACHEY. I have one more matter—be the third page in my calendar, the matter of Noble H. Sheldon—I think it is the same page on your calendar, your Honor. The man is charged with taking a bribe or a refund of $15 from the substitute mail carrier in Hutchinson, Minnesota. After complete investigation of the matter it has been determined there is some question as to whether or not an amount of money was owed to the carrier, the defendant involved, by the substitute mail carrier. It further appears this defendant had put 40 years of service into the government. As a result of this unfortunate matter he has been dismissed from the service, and

it is our disposition that the matter should be dismissed, and we would so move this morning.

The COURT. It will be dismissed.

Mr. HACHEY. I prepared an order for your Honor.

The COURT. Very well.

Mr. HACHEY. Mr. Williams is here. I don't think he has any objection.

Mr. ESSLING. That's all we have on the criminal calendar, your Honor. Mr. E. H. Carson whom I previously mentioned in connection with the defendant Edward McCormick is here and I believe he would like to present a petition to the Court for an order to return money. If the Court would like to hear that now Mr. Carson is here.

The COURT. All right. Mr. Carson, I understand you have a petition.

Mr. CARSON. Mr. Essling will have to sign on behalf of the government and then it will be paid by Standard Act Insurance Company, an insurance company which paid the Citizens Bank at Waterville its full loss.

The COURT. Pardon me.

Mr. Williams, I have appointed you to defend the young man sitting in the seat with the lady in the back. His name is Wilson. You go ahead and talk to him. I will accept your plea later.

Mr. CARSON. Standard Act Insurance Company, by reason of the blanket bond, paid the bank its full loss, $5,217.85. That was the amount McCormick took from the bank by robbery to which he has pleaded guilty. Now, the FBI has in its possession $3,096 of cash that was a part of the loot from the bank, and McCormick had $1,195 of the loot to buy a second hand Buick, the 1948 convertible car from Stevens Buick. The car is in possession of the Police Department of the City of Minneapolis and the Police Department had been

holding the car at the request of the FBI for use as evidence, and similarly the FBI itself was holding $3,096 of currency as evidence in the trial of McCormick. Now he has pleaded guilty so there is no longer any need for either the FBI or the Police Department to have either the money or the car; the money with which the car was purchased was money taken from the bank.

Now, I have a petition for the return of those items made by myself as attorney for Standard Act, verified by me as true, and the petition asking for the return of that property to Standard is also joined in and approved by the defendant McCormick, by the Citizens State Bank of Waterville, by the City of Minneapolis, by the City Attorney and by Mr. Essling in behalf of the United States. Those are all parties in interest.

The COURT. There isn't anybody else you can think of can sign that?

Mr. CARSON. No, there isn't. An order follows the petition.

The COURT. Anything else, Mr. Hachey?

Mr. HACHEY. Going back to the matter of Thomas E. Pollard who appeared this morning—I didn't quite understand that clearly—is there to be a probationary period after his release from Stillwater, or any type of sentencing?

The COURT. It is to commence at the expiration of sentencing at Stillwater.

Mr. HACHEY. Probation to commence after expiration of his sentencing at Stillwater—for how long?

The COURT. Three years.

Mr. ESSLING. That concludes the matters we have, your Honor, except the man you referred to.

The COURT. Where is your client?

Mr. WILLIAMS. Has he been arraigned yet?

The COURT. No.

Mr. ESSLING. Government now moves his arraignment.

Mr. WILLIAMS. We will waive the reading of the Information, your Honor, and enter a plea of not guilty.

The COURT. Very well. This will be set for trial on a date designated by you or your office, whoever is handling it.

Mr. ESSLING. Very well.

The COURT. What are we going to have on Monday?

Mr. ESSLING. Case number 4, United States versus Leonard Nims, number 8252.

The COURT. Anything else?

Mr. ESSLING. That's all, your Honor.

(Whereupon, at 10:30 a. m., court was adjourned.)

I hereby certify this to be a true and correct transcript of all proceedings had in all matters taking place before the Honorable Matthew M. Joyce, United States District Judge for the District of Minnesota, from the opening of the Court on October 3, 1952, which took place at ten o'clock a. m. through ten-thirty o'clock a. m., at which time the Court retired from the Bench, and includes all the proceedings in the case of United States of America versus Thomas E. Pollard at that convening of the Court on that date, and includes all proceedings before the Honorable Matthew M. Joyce in open court on October 3, 1952.

Edith Krueger,
EDITH KRUEGER,
Reporter,

U. S. GOVERNMENT PRINTING OFFICE: 1956